

1 ERIC P. ISRAEL (State Bar No. 132426)
eisrael@dgdk.com
2 JOHN N. TEDFORD, IV (State Bar No. 205537)
jtedford@dgdk.com
3 SONIA SINGH (State Bar No. 311080)
ssingh@dgdk.com
4 DANNING, GILL, DIAMOND & KOLLITZ, LLP
1901 Avenue of the Stars, Suite 450
5 Los Angeles, California 90067-6006
Telephone: (310) 277-0077
6 Facsimile: (310) 277-5735

7 Proposed Attorneys for Michael A. McConnell,
Chapter 11 Trustee
8

9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **NORTHERN DIVISION**

12 In re
13 HVI CAT CANYON, INC.,
14 Debtor.

Case No. 9:19-bk-11573-MB

Chapter 11

**CHAPTER 11 TRUSTEE'S NOTICE OF
OBJECTION AND LIMITED
OBJECTION TO APPLICATION OF THE
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR
AUTHORIZATION TO RETAIN AND
EMPLOY CONWAY MACKENZIE, INC.
AS FINANCIAL ADVISOR, EFFECTIVE
AS OF AUGUST 16, 2019**

Date: November 12, 2019
Time: 11:00 a.m.
Place: Courtroom 201
1415 State Street
Santa Barbara, California 93101

23 PLEASE TAKE NOTICE that Michael A. McConnell, the Chapter 11 trustee (the
24 "Trustee") for the estate of HVI Cat Canyon, Inc., hereby files his limited objection to the
25 Application of the Official Committee of Unsecured Creditors for Authorization to Retain and
26 Employ Conway Mackenzie, Inc. as Financial Advisor, Effective as of August 16, 2019 (*docket no.*
27 *219*) (the "Conway Application") filed by the Official Committee of Unsecured Creditors (the
28 "Committee") on or about September 20, 2019.

1 PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's order continuing the
2 hearing on the Conway Application entered on or about October 25, 2019 (*docket no. 447*), the
3 Committee may, not later than November 8, 2019, file and serve its reply papers to the Trustee's
4 response to the Conway Application.

5
6 DATED: November 4, 2019

DANNING, GILL, DIAMOND & KOLLITZ, LLP

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8 By: 

9 ERIC P. ISRAEL

10 Proposed Attorneys for Michael A. McConnell,
11 Chapter 11 Trustee
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LIMITED OBJECTION

Michael A. McConnell, the Chapter 11 trustee (the “Trustee”) for the estate of HVI Cat Canyon, Inc. (the “Debtor”), hereby responds to the Application of the Official Committee of Unsecured Creditors for Authorization to Retain and Employ Conway Mackenzie, Inc. as Financial Advisor, Effective as of August 16, 2019 (*docket no. 219*) (the “Conway Application”) as follows:

1. On or about September 20, 2019, the Official Committee of Unsecured Creditors (the “Committee”) filed its application to employ Conway Mackenzie, Inc. (“Conway”). On or about October 4, 2019, the California State Lands Commission (the “Commission”) filed its limited objection to and request for a hearing on the Conway Application (*docket no. 347*) (the “Conway Limited Objection”) on the grounds that the relief requested was premature because a significant number of creditors intended to apply for appointment of a Chapter 11 trustee, who would hire his/her own professionals. On or about October 10, 2019, the Court set the hearing on the Conway Application for October 28, 2019, at 10:00 a.m. (*docket no. 383*). The Committee filed its reply to the Conway Limited Objection on or about October 11, 2019 (*docket no. 392*), and the Commission filed a response thereto on or about October 21, 2019 (*docket no. 422*).¹

2. On or about October 16, 2019, the Court entered its Agreed Order Granting Motion for Appointment of a Chapter 11 Trustee (*docket no. 409*). On or about October 22, 2019, the Court approved the appointment of Michael A. McConnell as the Chapter 11 trustee in this case (*docket no. 431*).

3. Professionals, including the Committee, are not given carte blanche to hire professionals. Committees appointed in a Chapter 11 case must seek approval of the professionals the committee seeks to retain. 11 U.S.C. § 1103. The Court controls the Committee’s employment of professionals, including the terms on which they are employed. See 11 U.S.C. § 328(a). Section 328(a) requires the bankruptcy judge to determine what is reasonable under the circumstances. In

¹ Interested party UBS AG, London Branch filed a response in support of the Conway Application (*docket no. 406*). The California Department of Conservation, Division of Oil, Gas & Geothermal Resources and creditor Buganko, LLC filed joinders to the Conway Limited Objection (*docket nos. 429 and 430, respectively*).

1 re Thermadyne Holdings Corp., 283 B.R. 749, 756 (B.A.P. 8th Cir. 2002) (citing In re Mortgage &
2 Realty Trust, 123 B.R. 626, 630 (Bankr. C.D. Cal. 1991) (stating that Section 328(a) authorizes a
3 condition of employment only if it is reasonable); In re Allegheny Int'l Inc., 100 B.R. 244, 246
4 (Bankr. W.D. Pa. 1989) (stating that Section 328(a) empowers a debtor in possession or a
5 committee to employ professionals on any reasonable terms and conditions of employment subject
6 to court approval)).

7 4. Here, the situation has changed since the Conway Application was filed. The
8 Trustee does not intend to employ Conway, and instead plans to hire his own financial advisors in
9 this case – CR3 Partners, LLC (“CR3”). The Trustee has advised the Committee that he will ask
10 CR3 to cooperate with reasonable requests from the Committee. However, the Trustee does not
11 want to unfairly prejudice Conway, since circumstances have changed. Accordingly, the Trustee
12 suggests that the Court approve Conway’s employment to only cover work performed before the
13 Trustee’s appointment. Specifically, the Trustee does not oppose Conway’s employment for the
14 limited time period of August 16, 2019 through October 16, 2019.

15 5. The Trustee also opposes the proposed indemnity agreement in the Conway
16 Agreement. Exhibit “A” to the Conway Application. Here, indemnity is not necessary because a
17 trustee who acts under the supervision of a bankruptcy judge and who has obtained court approval
18 of their actions is entitled to derived judicial immunity. In re Giordano, 212 B.R. 617 (B.A.P. 9th
19 Cir. 1997), aff’d in part, rev’d in part on other grounds, 202 F.3d 277 (9th Cir. 1999); In re XRX,
20 Inc., 77 B.R. 797 (Bankr. D. Nev. 1987). This quasi-judicial immunity has been extended to both
21 the bankruptcy trustees and their professionals who act within their scope of authority and pursuant
22 to court order. See In re Harris, 590 F.3d 730, 742 (9th Cir. 2009) (citing Smallwood v. United
23 States, 358 F. Supp. 398, 404 (E.D. Mo. 1973), aff’d mem., 486 F.2d 1407 (8th Cir. 1973)) (“the
24 doctrine of judicial immunity also applies to court approved attorneys for the trustee”). The
25 Committee cites cases supporting quasi-judicial immunity for Committees and their professionals
26 as well. Such quasi-judicial immunity is more advantageous than an indemnity from what appears
27 to be an insolvent bankruptcy estate.

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1 6. The Committee argues that an indemnity is “customary and reasonable” here
2 (Conway Application at p.6, ll.23-24), but the Trustee respectfully disagrees. The Trustee notes
3 that he has declined an indemnity proposed by his own proposed financial advisor, CR3.
4 Particularly in this case with huge claims and many issues ahead of it, and with a future that is
5 highly uncertain, the estate should be cautious incurring additional obligations. The Committee’s
6 proposed financial advisor should not be given an indemnity from this estate.

7 For the foregoing reasons, the Trustee requests that the Court only approve the Conway
8 Application for the limited period August 16, 2019 through October 16, 2019, and that the Court
9 decline to authorize or approve the proposed indemnity agreement. The Trustee further prays for
10 all other appropriate relief.

11
12 DATED: November 4, 2019

DANNING, GILL, DIAMOND & KOLLITZ, LLP

13
14 By: 

15 ERIC P. ISRAEL

16 Proposed Attorneys for Michael A. McConnell,
17 Chapter 11 Trustee
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, CA 90067-6006.

A true and correct copy of the foregoing document entitled (*specify*): CHAPTER 11 TRUSTEE'S NOTICE OF OBJECTION AND LIMITED OBJECTION TO APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AUTHORIZATION TO RETAIN AND EMPLOY CONWAY MACKENZIE, INC. AS FINANCIAL ADVISORS, EFFECTIVE AS OF AUGUST 16, 2019 will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) November 4, 2019 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) , I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) November 4, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

PERSONAL DELIVERY ALSSI – TO BE DELIVERED BY 11/5/19
The Honorable Martin R. Barash
U.S. Bankruptcy Court
Bin on 1st Floor outside entry to Intake Section
21041 Burbank Blvd.
Woodland Hills, CA 91367

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 4, 2019

Date

Gloria Ramos

Printed Name

/S/ GLORIA RAMOS

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

- **William C Beall** will@beallandburkhardt.com, carissa@beallandburkhardt.com
- **Alicia Clough** aclough@loeb.com, mnielson@loeb.com, ladocket@loeb.com
- **Marc S Cohen** mscohen@loeb.com, klyles@loeb.com
- **Alec S DiMario** alec.dimario@mhllp.com, debra.blondheim@mhllp.com; Syreeta.shoals@mhllp.com
- **Karl J Fingerhood** karl.fingerhood@usdoj.gov, efile_ees.enrd@usdoj.gov
- **H Alexander Fisch** Alex.Fisch@doj.ca.gov
- **Don Fisher** dfisher@ptwww.com, tblack@ptwww.com
- **Brian D Fittipaldi** brian.fittipaldi@usdoj.gov
- **Gisele M Goetz** gmgoetz@hbsb.com, ggoetz@collegesoflaw.edu
- **Karen L Grant** kgrant@silcom.com
- **Ira S Greene** Ira.Greene@lockelord.com
- **Matthew C. Heyn** Matthew.Heyn@doj.ca.gov, mcheyn@outlook.com
- **Brian L Holman** b.holman@musickeeler.com
- **Eric P Israel** eisrael@dgd.com, danninggill@gmail.com; eisrael@ecf.inforuptcy.com
- **Razmig Izakelian** razmigizakelian@quinnemanuel.com
- **Alan H Katz** akatz@lockelord.com
- **John C Keith** john.keith@doj.ca.gov
- **Jeannie Kim** jkim@friedmanspring.com
- **Brian M Metcalf** bmetcalf@omm.com
- **David L Osias** dosias@allenmatkins.com, bcrfilings@allenmatkins.com, kdemorest@allenmatkins.com, csandoval@allenmatkins.com
- **Darren L Patrick** dpatrick@omm.com, darren-patrick-1373@ecf.pacerpro.com
- **Jeffrey N Pomerantz** jpomerantz@psjlaw.com
- **Todd C. Ringstad** becky@ringstadlaw.com, arlene@ringstadlaw.com
- **Mitchell E Rishe** mitchell.rishe@doj.ca.gov
- **Daniel A Solitro** dsolitro@lockelord.com, ataylor2@lockelord.com
- **Ross Spence** ross@snowspencelaw.com, janissherrill@snowspencelaw.com; donnasutton@snowspencelaw.com; brittanyDecoteau@snowspencelaw.com
- **Christopher D Sullivan** csullivan@diamondmccarthy.com, mdomer@diamondmccarthy.com; kmartinez@diamondmccarthy.com
- **Jennifer Taylor** jtaylor@omm.com
- **John N Tedford** jtedford@dgd.com, danninggill@gmail.com; jtedford@ecf.inforuptcy.com
- **Salina R Thomas** bankruptcy@co.kern.ca.us
- **Patricia B Tomasco** pattytomasco@quinnemanuel.com, barbarahowell@quinnemanuel.com; cristinagreen@quinnemanuel.com
- **Fred Whitaker** lshertzer@cwlawyers.com
- **William E. Winfield** wwinfeld@calattys.com, scuevas@calattys.com
- **Emily Young** pacerteam@gardencitygroup.com, rjacobs@ecf.epiqsystems.com; ECFInbox@epiqsystems.com